IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1078 OF 2004
IN
EXECUTION APPLICATION NO.31 OF 2004
IN
APPEAL NO.1-A OF 2002
AGAINST AWARD
IN
ARBITRATION APPLICATION NO.46 OF 2001

Ashok Champaklal Jamnadas & Anr. ...Appellants

Versus

National Securities & Ors. ...Respondents

And

Overseas Business Corporation ...Applicants

.....

Mr.Rishabh Shah i/b M/s.B.Amin & Co. for Applicants.

Mr.Hemang Raithatta i/b RMG Law Associates

for Appellants/Judgment Creditors.

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CORAM: A.M.KHANWILKAR, J.

JULY 4, 2005.

P.C.

1. Heard Counsel for the parties. Perused the pleadings.

2. By this Application, the Applicants (third

party), prays that the warrant of attachment in respect of a part or portion of Room No.10 in 105, Apollo Street, Fort, Mumbai - 400 023, comprising of one cabin admeasuring 136 sq.ft. and one store room admeasuring 100 sq.ft. be raised on the assertion that the said premises have been let out to the Applicants by the original tenant Mr.K.K.Mehta pursuant to Leave and License Agreement executed on August 17, 1971. The copy of the Leave and License Agreement has been placed on record. In addition, the Applicants have placed on record several documents relating back to February 1971 to indicate that they are in possession of the said property, pursuant to the initial entry made as licensee in August 1971. The documents relied upon by the Applicants are- correspondence with Controller of Stores, Central Railway, V.T., Bombay, Income-tax assessment order for the assessment year 1973-74, demand notice by income-tax authority in April 1975, certificate of registration of trade mark issued by Trade Mark Registry, Bombay and several other documents till recently, including the relevant bank entries to show that the Applicants have been paying cheque to

the tenant in the specified account.

3. On the above basis, it is contended that since the Applicants were occupying the premises initially as licensee since August 17, 1971 and continued to occupy the same even after the amendment of 1973 in the provisions of Bombay Rent Act, they have become deemed tenants in respect of the said property.

4. Counsel for the Judgment Creditors, however, contends that although the Applicants have produced license agreement, however, the license was subsisting only till November 1971. There is no documentary evidence to show that the license was renewed after November 1971, for which reason, by operation of law, it will have to be assumed that the Applicants have no protection of the amended provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rate (Control) Act, as is pressed into service on behalf of the Applicants. Besides, it is contended that the Applicants have failed to produce any receipt towards payment of compensation in respect of the

disputed premises for the period between 1971 to 1991. On the above argument, it is contended that the Applicants are not entitled for any relief.

5. To buttress this submission, reliance is placed on the decision of the Division Bench of our High Court reported in **AIR 2002 Bombay 471 in the case of Peter Alex D'Souza v. Prithi Paul Singh**, in particular, Paragraph 22, wherein, it is observed that if the license in favour of the occupant was not subsisting on the relevant date that person cannot be treated as deemed tenant under Section 15A of the Act.

6. Having perused the relevant documents on record placed along with the Chamber Summons by the Applicants and considering the pleadings and arguments of the Counsel appearing for the parties, there is no reason to doubt that the Applicants are in possession of the premises specified by them since August 1971. Initial entry of the Applicants is as licensee inducted by the original tenant Mr.K.K.Mehta, father of the Judgment debtor. According to the Applicants, even after expiry of

the license period in November 1971 they were allowed to occupy the premises and the original tenant Mr.K.K.Mehta accepted the amount towards compensation in that behalf. It is stated on behalf of the Applicants that for the first time, the original tenant Mr.K.K.Mehta objected to continuation of the Applicants in the disputed premises in the year 1982. In other words, there is substance in the argument canvassed on behalf of the Applicants that till 1973, when the amended provisions of Bombay Rent Act were introduced to confer deemed tenancy on the licensee in occupation of the premises whose license was subsisting on 1st February 1973; that provision will come to the aid of the Applicants to resist the proposed action against them in respect of the disputed premises. The disputed premises is an independent accommodation, which was in possession of the Applicants as licensee. There is nothing on record to show that the license was revoked before 1st February 1973. The Applicants have stated that attempt was made for dispossessing the Applicants by the original tenants for the first time in 1982. If it is so, the exposition in the decision of the

Division Bench pressed into service on behalf of the Judgment Creditors will be of no avail.

7. Counsel for the Applicants has rightly distinguished this decision, wherein the Court proceeded on the fact that admittedly, the license was revoked on 23rd October 1972 which is prior to 1st February 1973. In the present case, there is no evidence regarding revocation of license prior to 1st February 1973. On the other hand, the material on record would clearly support the stand of the Applicants that the Applicants continued to occupy the premises even after November 1971 when the license period came to an end and were paying compensation for the occupation of the premises to the original tenant Mr.K.K.Mehta.

8. In the circumstances, the Applicants ought to succeed to the extent that even if the disputed premises which is being treated as property of Mr.Ravi Mehta is put to auction, the same will have to be put to auction, subject to the encumbrance of the Applicants herein. In other words, the Applicants shall not be dispossessed from the

abovesaid premises, save and except by following due process of Law.

9. Chamber Summons allowed on the above terms.

A.M.KHANWILKAR, J.